



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

Docket No. [USCG-2021-0181]

RIN 1625-AA09

### Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is changing the operating schedule that governs the California Department of Transportation (Route 4) highway bridge, across Old River, mile 14.8, between Victoria Island and Byron Tract, California. This action is due to the infrequent amount of vessels requiring drawbridge openings on the waterway. It will reduce unnecessary staffing of the drawbridge during periods of navigational inactivity while continuing to meet the reasonable needs of navigation. The schedule change would require vessels to provide a four-hour advance notification for drawspan opening.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2021-0181 in the “SEARCH” box and click “SEARCH.” In the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, e-mail [Carl.T.Hausner@uscg.mil](mailto:Carl.T.Hausner@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CADFW	California Department of Fish and Wildlife
Caltrans	California Department of Transportation
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On October 25, 2021, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled “Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA” in the **Federal Register** (86 FR 58827). Further, the Commander (dpw), Eleventh Coast Guard District, mailed/emailed notification of the NPRM to 104 interested parties that may navigate Old River and published a notification of the NPRM in the Local Notice to Mariners, No. 43/21. The Coast Guard received no comments on this proposed rule.

On May 3, 2021, the Coast Guard published a temporary deviation from the operating schedule, entitled “Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA” in the **Federal Register** (86 FR 23278). The May 3, 2021 proposed temporary deviation to the bridge operating schedule was employed to determine whether a permanent change was warranted to allow the draw to operate as follows:

The draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

One comment from the Contra Costa County Office of the Sheriff was received

during the temporary deviation period and was addressed in the NPRM.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Caltrans (Route 4) highway bridge, across Old River, mile 14.8, between Victoria Island and Byron Tract, California is a swing span drawbridge. It provides a horizontal clearance of 98 feet and a vertical clearance of 12.7 feet above mean high water in the closed-to-navigation position with unlimited vertical clearance when fully opened. The Caltrans (Route 4) highway bridge is currently governed by 33 CFR 117.183, which requires the draw to open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw opens on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

Due to infrequent calls for drawbridge openings, Caltrans has requested a four-hour notification year-round for drawbridge openings at this location. A four-hour notification will allow Caltrans to use personnel more efficiently and reduce unnecessary staffing of the drawbridge during periods of navigational inactivity while continuing to meet the reasonable needs of navigation on the waterway.

There are approximately 10 marinas on Old River and nearby waterways, with two marinas upriver from the bridge. From 2011 through June 2020, the swing span opened for vessels 474 times, an average of 4.27 openings per month. Most openings have been for vessels operated by the CADFW (58%), followed by recreational vessels (22%), towboat-vessel assistance (9%), and tug and barge units (6%). Law enforcement and search and rescue vessels also used the waterway.

### **IV. Discussion of Comments, Changes and the Final Rule**

The preceding NPRM the Coast Guard issued provided a comment period of 60 days and no comments were received. The Final Rule would require the drawspan to

open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. This Final Rule would meet the reasonable needs of navigation of vessels that currently use the waterway.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a

significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have

a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.183 to read as follows:

**§ 117.183 Old River.**

The draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

Dated: 14 February 2022.

Brian K. Penoyer,  
Rear Admiral, U.S. Coast Guard,  
Commander, Eleventh Coast Guard District.

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